

No. 76947-8

SANDERS, J. (concurring)—I concur in the holding that prosecution of Jules Devin does not abate because he failed to timely appeal his conviction. However, the majority’s discussion of the merits of the doctrine of abatement ab initio is obiter dicta in its entirety. “The issue to which the statement relates was not before the court and, therefore, the statement did not and could not announce our adherence to such a rule.” *State ex rel. Johnson v. Funkhouser*, 52 Wn.2d 370, 374, 325 P.2d 297 (1958). The doctrine of abatement ab initio reflects the “‘fundamental principle . . . that the object of criminal punishment is to punish the criminal, and not to punish his family.’” *State v. Furth*, 82 Wash. 665, 668, 144 P. 907 (1914) (quoting *United States v. Pomeroy*, 152 F. 279, 282 (1907), *rev’d on other grounds sub nom. United States v. N.Y. Cent. & Hudson River R.R.*, 164 F. 324 (2d Cir. 1908)). Accordingly, prosecution must cease with the death of the accused. Abatement ab initio is a venerable fixture of Washington law, and it remains the law of the State.

AUTHOR:

Justice Richard B. Sanders

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WE CONCUR:

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